

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LEVI BATTLE, III]	
Petitioner,]	
]	
v.]	No. 3:11-0474
]	Judge Campbell
JERRY LESTER]	
Respondent.]	

O R D E R

On April 22, 2011, the petitioner initiated this action with the *pro se* filing of a petition (Docket Entry No.1) under 28 U.S.C. § 2254, for writ of habeas corpus.

Upon preliminary review of the petition, the Court determined that it had not been filed in a timely manner. Accordingly, an order (Docket Entry No.10) was entered granting the petitioner twenty one (21) days in which to show cause why the petition should not be denied for that reason.

Since the entry of this order, the petitioner has filed a Response (Docket Entry No.13). In the Response, the petitioner does not question the dates that were used by the Court to calculate the timeliness of this action. Rather, the petitioner argues that the limitation period was tolled an additional ninety (90) days during the time that he could have sought a writ of certiorari from the United States Supreme Court following the denial of state post-

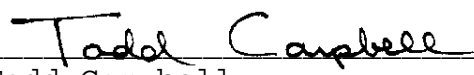
conviction relief. See Abela v. Martin, 348 F.3d 164,172-73 (6th Cir.2003)(*en banc*).

The Abela decision, *supra*, was effectively overruled by Lawrence v. Florida, 127 S.Ct. 1079,1083 (2007), when the United States Supreme Court held that the limitation period was not tolled for the ninety day period following the conclusion of state post-conviction proceedings. The petitioner filed his petition for state post-conviction relief on May 29, 2008, well after the Lawrence decision had become the law of the land. Thus, petitioner's reliance on the Abela decision to provide him with some additional tolling of the limitation period is misguided.

As a consequence, given the untimeliness of the petition, the petition is DENIED and this action is hereby DISMISSED. Rule 4, Rules - - - § 2254 Cases.

Having failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability shall NOT issue in this instance. 28 U.S.C. § 2253(c)(2).

It is so ORDERED.



Todd Campbell
United States District Judge